

SCHOONER NANCY.

---

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS  
TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND OF  
FACT IN THE FRENCH SPOILIATION CASES RELATING TO THE  
VESSEL SCHOONER NANCY, WILLIAM WARD, MASTER.

---

FEBRUARY 11, 1904.—Referred to the Committee on Claims and ordered to be printed.

---

COURT OF CLAIMS,  
*Washington, D. C., February 10, 1904.*

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law and opinion of the court, filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel schooner *Nancy*, William Ward, master.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,  
*Assistant Clerk Court of Claims.*

Hon. JOSEPH G. CANNON,  
*Speaker of the House of Representatives.*

---

[Court of Claims. French spoiliations. Act January 20, 1885; 23 Stat. L., 283. Decided March 31, 1902. Schooner *Nancy*, William Ward, master.]

No. of case.

Claimant.

1118. William S. Carter, administrator of William Smith, *v.* The United States.  
3589. Charles T. Lovering, administrator of Joseph Taylor, *v.* The United States;  
William G. Perry, executor of the estate of Nicholas Gilman, *v.* The United States;  
George G. King, administrator of James Scott, *v.* The United States;  
Frank Dabney, administrator of Samuel W. Pomeroy, *v.* The United States.  
3745. Archibald N. Howe, administrator of Francis Green, *v.* The United States.  
3338. Lucy S. Cushing, administratrix of Jacob Sheafe, *v.* The United States.  
1046. Charles F. Adams, administrator of Peter C. Brooks, *v.* The United States;  
A. Lawrence Lowell, administrator of Nathaniel Fellowes, *v.* The United States;  
Frances M. Boutwell, administrator of Benjamin Cobb, *v.* The United States;  
Thomas N. Perkins, administrator of John C. Jones, *v.* The United States;  
Frederick O. Prince, administrator of James Prince, *v.* The United States;  
William P. Dexter, administrator of Samuel Dexter, *v.* The United States;  
Frank Dabney, administrator of Samuel W. Pomeroy, *v.* The United States;  
H. H. Hunnewell, administrator of John Welles, *v.* The United States.  
68. Robert Codman, administrator of William Gray, *v.* The United States.

## PRELIMINARY STATEMENT.

These cases were tried before the Court of Claims on the 18th day March, 1902.

The claimants were represented by George S. Boutwell, William T. S. Curtis, Theodore J. Pickett, and Edward Lander, esqs.; and the United States, defendants, by the Attorney-General, through his assistants in the Department of Justice, Charles W. Russell, esq., with whom was Assistant Attorney-General Louis A. Pradt.

## CONCLUSIONS OF FACT.

The court, upon the evidence and after hearing the arguments and considering the same with the briefs of counsel on each side, determined the facts to be as follows:

I. The schooner *Nancy*, William Ward, master, sailed on a commercial voyage from Boston on the 23d day of January, 1799, bound to St. Iago de Cuba. While peacefully pursuing said voyage she was seized on the high seas on or about the 10th day of February following by the French privateer *Rencountre*, Andrew Caste, commander, but was subsequently retaken by the British vessels *Swallow*, *Argonaut*, and *Amitié* and carried into Kingston, Jamaica, where the court of vice-admiralty decreed one-half of the value of both vessel and cargo as salvage to be paid the recaptors, and, after deducting the amount of the salvage and the expenses of the proceedings, the sum of \$2,023.82 was paid over to the owner of the vessel and cargo.

The facts found by the court are narrated in the protest as follows:

The schooner *Nancy*, of Boston, sailed from Boston on the 22d of January, in the year 1799, bound to St. Iago, in Cuba, being perfectly tight, staunch, strong, and in every respect seaworthy and fit for the prosecution of their voyage, and having on board a cargo, consisting of brandy, beef, pork, codfish, butter, lard, cheese, raisins, beans, rice, whale oil, and sundry other merchandise, say that they saw the east end of Cuba on the 9th of the month of February, bearing west, and were proceeding for St. Iago, aforesaid, when, on the day after, about six leagues to the eastward of it, they saw a sail bearing west, and soon after they discovered it was a schooner rowing toward them, they having then a calm, and shortly after came up and proved to be a French privateer, mounting two four-pounders, one nine, one swivel, and having on board 55 men. She was called the *Rencountre*, Andrew Caste, master, and belonged to Cape François, as they were told; say that a number of armed men came on board and ordered the master and supercargo on board the privateer, with all their papers, which they refused to return, allowing only the supercargo to take a list of them. On the 11th the aforesaid privateer rowed the *Nancy* in a small river called Watenamo, in Cumberland Bay. There they broke open the hatches and took out sundry articles of merchandise, such as beef, pork, raisins, butter, hams, gin, and one trunk of goods belonging to the supercargo and a barrel belonging to the master, and put them on board the privateer, where they were both detained. On the 12th they discovered two brigs and one schooner in Cumberland Bay, when the privateer towed the *Nancy* some distance farther up the river, and several other articles of merchandise were plundered. On the day after they were again towed farther up, and a boat was sent from the privateer to convey the supercargo and master some distance up and threatening to put them on shore; that several shots were exchanged between the privateer and the aforementioned schooner, which returned down the river, on which day a barrel of shoes belonging to the master was taken. Say that the master and supercargo were ordered to return to their vessel, and all the Frenchmen were taken out; that they demanded their papers and were told by the captain of the privateer that they were up the river in his trunk. On the fourteenth the two brigs began to proceed up the river, and at eight a. m. of the same day the Frenchmen came on board the *Nancy* and took out two iron and four wooden guns and carried them on shore, with all their powder, and erected a small fort; that they again demanded their papers and received the same answer as before. On the fifteenth, one of the brigs being nearly within gunshot of the privateer, the captain of her ordered these deponents to haul the *Nancy* further off the shore, as he was going to set fire to his vessel, which was accordingly done, and they went on shore and again demanded their papers, and was told that they were still up the river, but should be sent them by a Spaniard; say that they despatched two men for them in company with some of the Frenchmen, who were told they were burnt on board the privateer by the neglect of the clerk not taking them out. A short time after several boats came from the brigs and schooners, which proved to be the brig *Swallow*, commanded by Archibald McFee; the brig *Argonaut*, commanded by Raymond Bayonne, and schooner *Amitié*, Anthony Feraud, master, who took possession of the *Nancy* and began to haul her down the river, and told them they were to be sent to Jamaica. On the eighteenth some peo-

ple from the brigs came on board and towed her into the bay, where a prize master and some men were put on board, and the supercargo, the mate, and three of the crew ordered on board the *Argonaut*, leaving the master and two men on board the *Nancy*; and about two o'clock a. m. of the nineteenth they all sailed together from Cumberland Bay bound to Kingston, in this island, and on the twenty-first of the same month arrived at Port Royal.

II. The *Nancy* was a duly registered vessel of the United States of 93 $\frac{1}{2}$  tons burden, built at Milton, Mass., in the year 1795, and was owned solely by William Smith, a citizen of the United States, residing in Boston.

III. The cargo of the *Nancy* consisted of brandy, beef, bacon, beans, and other provisions, and was owned by said William Smith, the owner of the vessel.

William Ward and Edward Cruft, citizens of the United States, also had small adventures on the *Nancy* at the time of capture.

IV. The losses to the different claimants by reason of the capture of the *Nancy* were as follows:

The value of the vessel.....	\$3,500.00
Freight earnings.....	1,555.55
Cargo, owned by William Smith.....	9,196.00
Adventure of William Ward.....	494.73
Adventure of Edward Cruft.....	2,500.00
Premiums of insurance paid.....	3,399.00

Amounting in all to ..... 20,645.28

V. The losses to said William Smith by reason of said capture were as follows:

The value of the vessel.....	\$3,500.00
The freight earnings.....	1,555.55
The value of the cargo.....	9,196.00
Premiums of insurance paid.....	2,760.00

Amounting in all to ..... 17,011.55

Less insurance received..... \$12,914.34

Less amount received from sale after deducting proportion  
thereof paid to Edward Cruft, to wit, \$450.13..... 1,573.69

14,488.05

Leaving net loss to William Smith..... 2,523.50

VI. January 19, 1799, said Edward Cruft effected insurance in the office of Joseph Taylor, at Boston, in the sum of \$2,570, viz, \$1,570 on goods, being his adventure, and \$1,000 on his commissions as supercargo, paying therefor a premium of 20 per cent, by a policy underwritten by the following persons, all of whom were citizens of the United States, each in the sum set opposite his name, viz:

Francis Green.....	\$500
Samuel W. Pomeroy.....	750
Nicholas Gilman.....	750
James Scott.....	300
Jacob Sheafe.....	270

August 24, 1799, said Taylor, as agent, duly paid the said assured the sum of \$2,049.98 as and for a partial loss by reason of the premises, the same being a loss of 79.766 per cent to each of said underwriters. On this policy there was a total loss of \$1,000 on commissions and \$1,049.98 on the adventure of said Cruft, he having received a return of \$450.13 as his share of the proceeds of the sales of said cargo after the payment of salvage. The loss to each underwriter was as follows, viz:

Francis Green.....	\$398.83
Samuel W. Pomeroy.....	598.24
Nicholas Gilman.....	598.24
James Scott.....	239.30
Jacob Sheafe.....	215.37

Total..... 2,049.98

January 22, 1799, said William Smith effected insurance in the office of Peter C. Brooks on said vessel and cargo in the sum of \$12,000, being \$2,500 on the vessel and \$9,500 on the cargo, paying therefor a premium of 20 per cent, by a policy under-

written by the following persons, all of whom were citizens of the United States, each in the sum set opposite his name, as follows:

Nathaniel Fellowes.....	\$2,000
Benjamin Bussey.....	1,000
Benjamin Cobb.....	500
David Greene.....	1,000
John C. Jones.....	600
James Prince.....	500
Samuel Dexter.....	500
Samuel W. Pomeroy.....	1,000
John Welles.....	500
Tuthill Hubbard.....	1,000
Daniel Sargent.....	800
William Gray, jr.....	1,000
John I. Clark.....	1,000
Caleb Hopkins.....	600

September 18, 1799, said Brooks, as agent, duly paid the said assured the sum of \$9,914.34 as and for a partial loss by reason of the premises. The said vessel, however, was bought in at the sale under the decree of the court of vice admiralty and abandoned to the underwriters, and the same was afterwards sold for their benefit for the sum of \$2,507.60, making the final loss to said underwriters the sum of \$7,406.74 on vessel and cargo, the same being a loss of 61.723 per cent of the amount underwritten by each of said underwriters, as follows, viz:

Nathaniel Fellowes.....	\$1,234.47
Benjamin Bussey.....	617.23
Benjamin Cobb.....	308.61
David Greene.....	617.23
John C. Jones.....	370.34
James Prince.....	308.61
Samuel Dexter.....	308.61
Samuel W. Pomeroy.....	617.23
John Welles.....	308.61
Tuthill Hubbard.....	617.23
Daniel Sargent.....	493.78
William Gray, jr.....	617.23
John I. Clark.....	617.23
Caleb Hopkins.....	370.33
Total.....	7,406.74

January 18, 1799, said William Ward effected insurance on his adventure in the office of Peter C. Brooks in the sum of \$500, paying therefor a premium of 25 per cent by a policy underwritten in that sum by said Tuthill Hubbard.

July 22, 1799, said Brooks, as agent, duly paid the said assured the sum of \$484.50 as and for a loss arising on this policy by reason of the premises.

February 12, 1799, said William Smith effected insurance on the freight of said vessel in the office of Peter C. Brooks in the sum of \$3,000, paying therefor a premium of 12 per cent by a policy underwritten by the following persons, all of whom were citizens of the United States, each in the sum set opposite his name, viz:

Matthew Bridge.....	\$500
Benjamin Cobb.....	500
Benjamin Homer.....	500
Daniel D. Rogers.....	500
Benjamin Sumner.....	500
Stephen Gorham.....	500

September 18, 1799, said Brooks, as agent, duly paid the said assured the sum of \$3,000 as and for a total loss by reason of the premises.

April 4, 1808, Tuthill Hubbard, in consideration of \$60,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

November 23, 1804, Matthew Bridge, in consideration of \$3,180.37 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned

to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

July 23, 1805, Benjamin Homer, in consideration of \$5,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

October 19, 1804, Daniel D. Rogers, in consideration of \$3,400 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

February 1, 1804, Benjamin Sumner, in consideration of \$600 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

November 21, 1801, Stephen Gorham, in consideration of \$2,986.65 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

February 15, 1805, Benjamin Bussey, in consideration of \$10,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

December 23, 1801, David Greene, in consideration of \$6,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

December 8, 1801, the administrator of Caleb Hopkins, a certified copy of whose letters are on file, in consideration of \$3,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from the underwriting of said Caleb Hopkins in the office of the said Brooks, assigned to the said Brooks all the right, title, and interest in and to all insurance done by said Hopkins as an underwriter in the office of the said Brooks.

September 2, 1806, Daniel Sargent, in consideration of \$3,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

March 21, 1804, John I. Clark, in consideration of \$3,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

The claimants herein have produced letters of administration for the estates of the parties for whom they appear, and have otherwise proved to the satisfaction of the court that they are the same persons who suffered loss by the seizure and condemnation of the *Nancy*, as set forth in the preceding findings.

Said claims were not embraced in the convention between the United States and the Republic of France, concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants, in their respective capacity, are the owners of said claims, which have never been assigned, except as aforesaid.

#### CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure was illegal, because of the illegal acts of the captors after the seizure of said vessel, and the insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relin-



quishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States:

William S. Carter, administrator of William Smith, two thousand five hundred and twenty-three dollars and fifty cents.....	\$2,523.50
William G. Perry, executor of Nicholas Gilman, five hundred and ninety-eight dollars and twenty-four cents.....	598.24
George G. King, administrator of James Scott, two hundred and thirty-nine dollars and thirty cents.....	239.30
Frank Dabney, administrator of Samuel W. Pomeroy, nine hundred and six dollars and eighty-five cents.....	906.85
Archibald M. Howe, administrator of Francis Greene, three hundred and ninety-eight dollars and eighty-three cents.....	398.83
Lucy S. Cushing, administrator of Jacob Sheafe, two hundred and fifteen dollars and thirty-seven cents.....	215.37
Charles F. Adams, administrator of Peter C. Brooks, six thousand three hundred and seventeen dollars and fifty-five cents.....	6,317.55
A. Lawrence Lowell, administrator of Nathaniel Fellowes, twelve hundred and thirty-four dollars and forty-seven cents.....	1,234.47
Francis M. Boutwell, administrator of Benjamin Clark, eight hundred and eight dollars and sixty-one cents.....	808.61
Thomas N. Perkins, administrator of John C. Jones, three hundred and seventy dollars and thirty-four cents.....	370.34
Frederick O. Prince, administrator of James Prince, three hundred and eight dollars and sixty-one cents.....	308.61
William P. Dexter, administrator of Samuel Dexter, three hundred and eight dollars and sixty-one cents.....	308.61
H. H. Hunnewell, administrator of John Welles, six hundred and seven-teen dollars and twenty-three cents.....	617.23
Robert Codman, administrator of William Gray, six hundred and seven-teen dollars and twenty-three cents.....	617.23
Total amount recoverable.....	15,464.74

No claim has been filed herein on behalf of the estates of William Ward and Edward Cruft.

WELDON, J., delivered the opinion of the court:

The schooner *Nancy*, William Ward, master, sailed on a commercial voyage from Boston on the 23d day of January, 1799, bound to St. Iago de Cuba. While peacefully pursuing said voyage she was seized on the high seas on or about the 10th day of February following, by the French privateer *Rencontre*, Andrew Caste, commander, but was subsequently retaken by the British vessels *Swallow*, *Argonaut*, and *Amitie*, and taken to Kingston, Jamaica, where the court of vice-admiralty decreed one-half the value of both the vessel and cargo as salvage to be paid to the recaptors.

The *Nancy* was a duly registered vessel of the United States of 93 $\frac{1}{2}$  tons burden, built at Milton, Mass., in the year 1795, and was owned solely by William Smith, a citizen of the United States residing in Boston. The vessel and cargo were abandoned to the insurer as a total loss, and there is no claim filed in behalf of the owner of the vessel or cargo, the cargo also belonging to the owner of the vessel, but a claim is made on the part of several insurers who issued policies of insurance on the vessel and cargo, and who, in consequence of the capture and condemnation for salvage, paid to the owner of the vessel and cargo the full amounts of the respective policies, deducting 2 per cent therefrom.

The seizure was made by the French privateer on the 10th day of February, 1799, when war was flagrant between France and Great Britain and after the abrogation of the treaty which had been entered into upon the part of the United States with the Government of France of 1778, denominated Treaty of Amity and Commerce (8 Stat. L., 12).

At the time of the capture, under and by virtue of international law the privateers of France had the undoubted and undisputed right to search, and if necessary to seize American vessels. The right of search is preliminary to the right of seizure, and the right of seizure depends upon the result of the exercise of the right of search. Search and seizure are not necessarily illegal, because in time of war the belligerent, founded upon the condition of war, have the right to the exercise of both. Upon the seizure of a vessel, although neutral, all presumptions are in favor of the seizing vessel and the onus is thrown upon the seized vessel, and therefore when a seizure is made the presumption of law is that it was properly made. If, upon the seizure, all presumptions are in favor of the seizing vessel, there is nothing in this case to indicate that the French vessel, in making a search and consequent seizure, acted illegally, so far as

the mere seizure is concerned. If the seizure was made in a lawful manner, and if no illegality is shown to have existed in what the French privateer did afterwards, then no ground for recovery exists founded on seizure alone. The liability of France depends upon what it did, and not being a party to the proceeding in which the decree of salvage was made, France is not bound by the legal effects of that decree except as a mere measure of the damages suffered by the owners of the vessel. The liability of the United States in this proceeding is measured by the liability of France, and if no facts are shown which would make France liable (if this was a proceeding against France), then no liability attaches to the United States under the treaty of September 30, 1800.

But the case does not stop with the mere seizure of the vessel. After the capture by the French privateer, the *Nancy* was taken up a small river connected with Cumberland Bay, and while in the possession of the French the hatches of the vessel were broken open, and sundry articles of merchandise, such as beef, pork, raisins, butter, hams, and gin were taken out, and also one trunk of goods, belonging to the supercargo, and a barrel belonging to the master, which were put on board the privateer; after the discovery of the brigs and schooner which recaptured the *Nancy* she was taken farther up the river and several other articles of merchandise were taken from her; the crew were taken out of the vessel, whereupon the captain demanded his papers, which were then in the possession of the captain of the privateer. On the 14th day of February, following the capture, the French took from the *Nancy* two iron and four wooden guns and carried them on shore with all their powder and erected a fort. The master again demanded the papers and received the same answer as before. After again demanding the papers they were told by the French that they had been burned on board the privateer by the neglect of the clerk not taking them out.

After these spoliations upon the part of the French in charge of the captured vessel, she was recaptured from the French by the British vessel, as shown in the findings.

Upon the capture of the American vessel it was the duty of the officers in charge of the French privateer immediately to close and seal her hatches, and with reasonable dispatch to take the American vessel into port and institute judicial proceedings to determine the lawfulness of the capture, affording the captain and crew of the American vessel every facility to defend their vessel in such proceeding.

Incident to that obligation it was the duty of the officers and crew of the French vessel to preserve intact the American vessel and its cargo pending judicial proceedings, thereby preserving without diminution or destruction the property seized, so that in case of a decree in favor of the American owners the vessel might be restored with no other damage than the delay, for which remuneration might be made if in the opinion of the court no probable cause existed for the seizure.

The findings show that a considerable portion of the cargo was taken from the *Nancy* by the crew of the French privateer; that the vessel was despoiled in many particulars by the acts of the French, and that the papers were burned on board of the privateer "by the neglect of the clerk in not taking them out."

Whatever may have been the character of the capture, either legal or illegal, the acts of the French crew while in possession of the *Nancy* before its capture by the English vessel were in violation of all the rights of the captured party, and the transaction, taken as a whole, was in violation of the rules of international law, and therefore a liability attached to the Government of France. The effort to condemn as lawful prize must be in all its essentials legal, and the omission of any important factor vitiates the proceeding as a lawful proceeding, as was held in the case of the *Nancy*, Wells, master (37 C. Cls. R., —). Even though there may be a legal seizure, it is the duty of the seizing vessel to follow such legal seizure by affording to the captured party all facilities of defense to which he may be entitled. The proceeding is a proceeding *in rem*, and it is the duty of the party seeking a condemnation to preserve the *res* in its original shape, using only such means as are necessary to its protection. The acts of the captors after capture being in violation of their duty, the court decides, upon the whole case, that the insurers had a valid claim for indemnity upon the French Government prior to the ratification of the treaty of September 30, 1800, and that they are entitled to recover, as shown in the conclusion of law, being a certain per cent paid by each underwriter on the amount underwritten by him.

The conclusions of fact and conclusions of law, with a copy of the opinion, will be reported to Congress.

BY THE COURT.

Filed March 31, 1902.

A true copy.

Test this 10th day of February, 1904.

[SEAL.]

JOHN RANDOLPH,  
Assistant Clerk Court of Claims.

